

- 7 -

REMARKS

The Examiner's comments together with the cited references have been carefully studied. Favorable reconsideration in view of the foregoing amendments and following remarks is respectfully requested.

Claims 1-38 are pending in the application. Claims 1-15 and 21 have been rejected. Claims 16-20 and 22-38 have been withdrawn. Claims presently active are claims 1 to 15 and 21. Claim 1 has been amended to recite that the interconnecting voids enable "capillary action for an ink adsorption rate resulting in a dry time of less than 10 seconds, the microvoids occupying from 40 to 65 percent by volume of the microvoided layer." Support for these amendments are to be found on page 10, lines 18-25, and page 13, lines 10-13. Favorable reconsideration of the application in view of the following remarks is respectfully requested.

Applicants herewith file a terminal disclaimer in compliance with 37 CFR §1.321(c) to overcome a provisional] double patenting rejection based on a nonstatutory double patenting ground.

Relying on 35 U.S.C. §102(b), the Examiner rejected claims 1-14 as being anticipated by Morita et al. Claims 1-15 and 21 also stand rejected under 35 U.S.C. §103(a) as being unpatentable over Morita et al. Apparently with respect to claim 12, it is the conclusion of the Examiner that "... While the reference does not specifically recite inclusion of other polymeric materials, it would have been obvious to one of ordinary skill in the art to include limited amounts of materials with similar properties in order to enhance the properties of the material."

The Examiner states that Applicants' statement alone, that Morita et al. would not result in an open-cell media, is not persuasive. The Examiner further states that if the film was not porous but had closed cells, it would not have moisture permeability as disclosed. The Examiner states that the reference inherently makes an open cell foam.

Applicants take the position that creating open cells in a polylactic acid media is not obvious and is a key to the invention presently claimed. Applicants have found that the combination of relatively higher loadings of voiding agents, stretching in two directions, and relatively high stretching, a combination not disclosed in any of the Examples of Morita,

U.S. Serial No. 10/722,886

- 8 -

would be necessary to obtain an open-celled structure. Morita, therefore, is incapable of obtaining an open-cell material using methods exemplified and provides no teaching of how the process parameters would need to be changed in order to obtain an open-cell material "having interconnecting voids" as required by present claim 1.

Furthermore, Morita *et al.* do not remotely suggest or teach that their film can be used in an inkjet recording element. Morita *et al.* disclose a porous film that can be used for paper diapers and packaging materials. Clearly, it may be desirable that films for such uses be capable of absorbing water or other fluids, by being porous, but it would not be desirable that films for such uses to promote the passage (by capillary action through interconnected voids) of water or other fluids through the film, in which case the film would not be an open cell film have interconnecting voids.

In view thereof, it follows that the subject matter of the claims would not have been obvious of Morita *et al.* at the time the invention was made.

Applicants have reviewed the prior art made of record and believe that singly or in any suitable combination, they do not render Applicants' claimed invention unpatentable.

In view of the foregoing remarks and amendment, the claims are believed allowable and such favorable action is courteously solicited. Should the Examiner consider that additional amendments are necessary to place the application in condition for allowance, the favor is requested of a telephone call to the undersigned counsel for the purpose of discussing such amendments.

Respectfully submitted,



Chris P. Konkol
Attorney for Applicant(s)
Registration No. 30,721

Rochester, NY 14650
Telephone: (585) 722-0452
Facsimile: (585) 477-1148

U.S. Serial No. 10/722,886